

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 865 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 3 to 5 No.
No. 2 Yes.

DAFER RAHMAN ZARAR

Versus

STATE OF GUJARAT

Appearance:

MR.PRAVIN S.GONDALIYA FOR MR YS LAKHANI for Petitioner
MISS.SIDDHI TALATI,AGP for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/12/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed seeking a writ of certiorari for quashing show cause notice against the petitioner issued under Bombay Police Act, Annexure "A", order of the Externing Authority dated 30.6.1998, Annexure "B" and the order of the Appellate Authority, Annexure "C" dated 29.8.1998.

The brief facts are that a show cause notice under section 56 of the Bombay Police Act, was issued to the petitioner to show cause why in view of his alleged antisocial activities and registration of cases under various sections of the Indian Penal Code punishable under Chapters XVI & XVII thereof the order of his externment be not passed. The petitioner appeared and filed reply to the show cause notice. Evidence was recorded by the Externment Authority and after hearing the petitioner the impugned order at Annexure "B" was passed under which the petitioner has been externed for a period of two years from districts Jamnagar, Rajkot, Junagadh and Kachchh. An appeal was preferred against this order of the Externment Authority which was dismissed on 29.8.1998 vide Annexure "C" by the Appellate Authority. It is therefore this writ petition.

The learned Counsel for the petitioner and the learned Assistant Government Pleader have been heard. The impugned orders have been assailed by learned Counsel for the petitioner on several grounds. The first is that the order of the Externment Authority as well as Appellate Authority is mechanical in nature and is specimen of non application of mind. Another attack has been that the period and area of operation has not been mentioned in show cause notice, Annexure "A" which has not only rendered the show cause notice vague and invalid but has also rendered the entire proceedings invalid. Another attack has been that no reason has been given by the Externment Authority why the petitioner was externed from four districts especially when he is residing in a village in district Jamnagar. Another attack has been in the show cause notice two criminal cases under the IPC have been shown to have been registered against the petitioner but in both the cases the petitioner was acquitted and this fact was not considered either by the Externment Authority or by the Appellate Authority which has rendered both the orders illegal. Last attack has been that less drastic remedy was not considered by the Externment Authority which has also rendered the orders of the authorities invalid and illegal.

Perusal of the show cause notice, Annexure "A" shows that except three cases, two under IPC and one under Prohibition Act, all allegations are general in nature and vague in character. The typed copy of translation of show cause notice shows that it runs into four pages but nowhere in the notice, the period and the area of operation of the petitioner has been disclosed. The effect of such non disclosure in the show cause

notice was considered by the Division Bench of this Court in a case of Rajput Ranjitsing Jatubha Vs.Vinay Vyas, 1986(1) GLR 478. The Division Bench observed that a mere look at the allegations show that they suffer from the vice of vagueness viz.(i) no period is mentioned during which the alleged nefarious activities have been carried on by the petitioner and (ii) no area or location is shown where such activities are carried on. These infirmities must be treated to be fatal infirmities. It was further observed that due to these infirmities the petitioner got no reasonable opportunity to show cause against the proposed externment on the allegation contained in the show cause notice. It further observed if the grounds are inoperative in law on account of vagueness, the entire proceedings emanating from them would fall through. Applying verdict of the Division Bench to the facts contained in show cause notice, Annexure "A", it can safely be said that the notice is vague in as much as it does not disclose the period and area of petitioner's nefarious activities which has not only rendered the notice invalid but also rendered the impugned order invalid. As a result thereof the impugned order of the Externing Authority cannot be maintained.

The notice, Annexure "A", is further vague in as much as in para 2 thereof various activities of the petitioner have been disclosed but no date, time etc. so also place has been shown. It further appears that the Externing Authority has travelled beyond the allegations contained in the show cause notice. In the judgment the Externing Authority was influenced not only by two cases under section 323 etc. of the Indian Penal Code but also by four more cases viz. C.R.Nos.109/95, 123/95, 87/96 and 110/97. While mentioning these criminal cases against the petitioner in the show cause notice, the Externing Authority did not disclose under which sections of the IPC these cases were registered against the petitioner, and further, since these cases were not shown in the show cause notice the petitioner was prevented from presenting effective defence to the show cause notice. This has rendered the order of the Externing Authority violative of principles of natural justice and it has also rendered the said order suffering from the vice of non application of mind. This is another ground on which the impugned order of the Externing Authority cannot be sustained. The order of the Externing Authority further suffers from the vice of non application of mind. When it is mentioned that earlier the offences have been registered and proved against the person though the aforesaid person is not stopping the aforesaid antisocial activities. In the show cause

notice it was mentioned that these cases are pending. There was no material before the Externig Authority that these offences were proved. On the other hand the order of the Externig Authority shows that the stand of the petitioner before him was that he was acquitted in two criminal cases under the IPC. In respect of this stand the Externig Authority made no efforts to ascertain whether those cases were pending or resulted in conviction or acquittal which again renders the order of the Externig Authority bad on account of non application of mind to the material on record.

The order of the Externig Authority further suffers from the vice of non application of mind when he has mentioned that the petitioner has committed registered offences under chapters XVI and XVII of the IPC. Two C.R.Nos.10/97 and 89/95 are under sections 323, 504 and 506(2) of IPC besides 447 and 337. The offence under sections 504 and 506(2) do not fall either under chapter XVI and XVII of the IPC. Remaining offence falls only under chapter XVI and not under chapter XVII of the IPC. Thus, it is mechanically mentioned in the order of the Externig Authority that the petitioner has committed offences punishable under Chapter XVI & XVII of the IPC which has further rendered it illegal and invalid.

The order of the Appellate Authority also suffers from the same vice. As many as six grounds taken by the petitioner have been mentioned in the order of the Appellate Authority but he has not considered all those six points. His attention was confined only to one point that the notice is vague. The Appellate Authority observed that no specific place, date or time is given regarding allegations as shown in the notice. In spite of these observations, the Appellate Authority, in a mechanical manner preferred to dismiss the appeal. All those points raised by the petitioner before the Appellate Authority were not considered by it. The conclusion of the Appellate Authority is totally subjective. When the authority was exercising quasi judicial functions some objectivity in the order of the authority was required. Simply by observing that looking to the original papers, confidential statements of nine witnesses, it appears that the appellant-petitioner is doing activities as alleged, the order of the Externig Authority could not be confirmed. This shows that the order of the Appellate Authority was also mechanical. It did not take into consideration other pleas taken by the petitioner-appellant before it.

The Externig Authority had issued show cause

notice to the petitioner probably in respect of his activities confined in village Dhrol, district Jamnagar but he has chosen to pass the order of externment against the petitioner from four districts viz. Jamnagar, Rajkot, Junagadh and Kachchh. No reason has been given by the Externing Authority why the petitioner had been externed from four districts. The only observation on this point in the judgment of the Externing Authority is as under :

"...if he is externed only from the
Jamnagar District, then in this advance
mechanical age, it is likely that he will
continue his aforesaid activities.
Therefore, it is proper to extern the
aforesaid person from Jamnagar District
and the nearby districts i.e. Rajkot,
Kachchh and Junagadh."

From the above observations, it is clear that no reason has been given except advance mechanical age which is yet to be understood only by the Exsterning Authority and not by the Court. This has also rendered the order of the Externing Authority invalid.

Before the Appellate Authority also the petitioner contended that in two offences he was acquitted. It is true that he did not file judgment of acquittal but once this plea was raised before the Externing Authority as well as before the Appellate Authority it could have made inquiry as to whether there was truth in the assertion of the petitioner or not. If acquittal of two cases was not considered by the Externing as well as by the Appellate Authority, it has rendered both the orders invalid.

The last submission that none consideration of lesser drastic remedy has rendered the two orders invalid is without any force. The contention has been that personal and surety bonds could have been demanded from the petitioner instead of externing him. However, non consideration of lesser drastic remedy ipso facto will not render the externment order invalid or illegal. In view of the alleged activities of serious nature, may be true or false, the Externing Authority committed no illegality in not considering the lesser drastic remedies . It had jurisdiction to pass the order of externment. As such on this ground, the externment order cannot be quashed.

The show cause notice exhausted the moment the

petitioner appeared and filed his reply in defence. Consequently, after the judgments of the Externing Authority and Appellate Authority there remains no occasion for quashing the show cause notice. However, for the reasons given above the orders of the Externing Authority and the Appellate Authority cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned orders contained in Annexure "B" dated 30.6.1998 of the Externing Authority and Annexure "C" dated 29.8.1998 of the Appellate Authority are hereby quashed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt